

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6548-01
Bill No.: HB 2568
Subject: Employees-Employers; Employment Security
Type: Original
Date: March 1, 2016

Bill Summary: This proposal exempts certain companies involved in taxicab services from the definition of employer in the unemployment compensation laws

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
UI Administration Fund	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)
Wagner Peysner Fund	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$50,000,000)	\$0 or (\$50,000,000)	\$0 or (\$50,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal could have a significant negative impact on their organization. DOLIR stated the United States Department of Labor (USDOL) has determined it raises several conformity issues with federal law.

The bill adds a new section 288.032.5 which states that a company that leases a taxicab to a person or that provides dispatching or similar rider referral services for a person shall not be determined to be the employer of such person if such person drives a taxicab under a license issued to him or her by a municipality or other governmental entity that has promulgated regulations concerning the manner and means by which the driver's results are accomplished.

Review of this bill by the United States Department of Labor (USDOL) has identified an issue that may affect certification of Missouri's unemployment insurance (UI) program.

The federal and state governments are jointly responsible for administering the UI system. State laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program and for employers to qualify for certain tax credits.

Non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development - Division of Workforce Development uses for Wagner-Peyser reemployment services.

The Federal Unemployment Tax Act (FUTA) imposes a 6.0% percent payroll tax on employers. Most employers never actually pay the total 6.0% percent due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4 percent against the FUTA payroll tax if the USDOL's Secretary of Labor approves the state's UI law. However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0% percent, or approximately an additional \$917 million per year.

This bill would create a conformity issue if the driver performed services in an employment relationship for a state or local government entity, certain nonprofit organizations or federally recognized Indian tribes. If the driver performs services for other entities, the exclusion of coverage under the state UI law may have negative tax implications for such entities.

ASSUMPTION (continued)

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA), requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that UC be payable based on services performed for state and local governmental entities, federally recognized Indian tribes, and certain nonprofit organizations. Specifically, Section 3304(a)(6)(A), FUTA, requires coverage of services to which Section 3309(a)(1), FUTA, applies, “in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law.” Section 3309(a)(1), FUTA, applies to services excluded from the term “employment” solely by reason of Section 3306(c)(7) or (8), FUTA. These sections apply to services performed for state and local governmental entities, certain nonprofit organizations, and Indian tribes. There are specific exceptions to this coverage requirement that are not relevant here.

Section 3306(i), FUTA, references the definition of an employee in Section 3121(d) of the IRC of 1986. Section 3121(d)(2), IRC, specifies that employee means “any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.” Regulations implementing Section 3306(i), FUTA, are found at 26 C.F.R. 31.3306(i)-1. These regulations specify that an individual is an employee if the relationship between the individual and the person for whom services are performed has the legal relationship of employer and employee:

Generally, such a relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the results to be accomplished by the work but also as to the details and means by which that result is accomplished.

The regulations explain that “it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if [the employer] has the right to do so.” Concerning independent contractors, the regulations are not permissive; if an employer-employee relationship exists, “it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.” Thus, the basic determinant of whether or not service is performed by an independent contractor is the right of direction and control, whether or not it is exercised.

Missouri UI law must contain a test for determining an employment relationship at least as stringent as the common law test for direction and control used by the Internal Revenue Service (IRS). If the test used to determine whether the service was performed in an employment relationship is not consistent with the IRS test then a required coverage issue would exist. HB 2568 designates all individuals performing services as a licensed taxicab driver as not an employee of the entity for whom the service is performed regardless of the extent of direction and control the entity may exercise over the performance of the work of the driver.

ASSUMPTION (continued)

If such entity is a state or local government, certain nonprofit organization, or federally recognized Indian tribe, Missouri UI law must provide coverage of such service and the exclusion provided in HB 2568 is a conformity issue.

Additionally, if the taxicab driver is performing the service in an employment relationship determined under the common law test when performed for other entities then failure to require the payment of contributions for such service may have negative tax implications for the entity for whom such service is performed since no contributions would have been paid into the state UI trust fund, and therefore no credit may be taken against the 6.0 percent FUTA tax.

Most employers never actually pay the total 6.0% percent due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4 percent against the FUTA payroll tax if the USDOL's Secretary of Labor approves the state's UI law. However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0% percent, or approximately an additional \$917 million per year.

Officials at the **Department of Revenue** and **Joint Committee on Administrative Rules** each assume this proposal will not have a fiscal impact on their respective organizations.

Oversight assumes the proposed language may result in conformity issues with federal law. Oversight will show the loss of federal funds as \$0 (the proposal would be implemented in a way that does not conflict with federal technical requirements) or the amount estimated by DOLIR, \$38 million (Missouri fails to comply with federal regulations) to the Unemployment Insurance Administration Fund and \$0 or \$12 million to the Wagner Peyser Fund.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
UNEMPLOYMENT ADMINISTRATION FUND			
<u>Loss</u> - DOLIR - Potential non-conformity with federal law	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>
ESTIMATED NET EFFECT TO THE UNEMPLOYMENT ADMINISTRATION FUND	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>	\$0 or <u>(\$38,000,000)</u>
WAGNER PEYSER FUND			
<u>Loss</u> - DOLIR - Potential non-conformity with federal law	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>
ESTIMATED NET EFFECT ON THE WAGNEY PEYSER FUND	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

A direct negative fiscal impact to small businesses could be expected as a result of this proposal based on an increase in unemployment taxes they will be required to pay.

FISCAL DESCRIPTION

This bill excludes companies that lease taxicabs to individuals or that provide dispatching or similar rider referral services for such individuals from the definition of employer for the purposes of this section if the individuals drive a taxicab under a license issued to them by some governmental entity that has established regulations concerning the manner and means by which the driver's results are accomplished.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Department of Revenue
Joint Committee on Administrative Rules



Mickey Wilson, CPA
Director
March 1, 2016

Ross Strobe
Assistant Director
March 1, 2016